

REMARKS

The Official Action of August 26, 2003 has been carefully considered and reconsideration of the application as amended is respectfully requested.

The courtesy of Examiner Dawson in conducting a telephone interview with the undersigned on March 2, 2004 is gratefully acknowledged. A summary of what transpired in the interview is set forth below.

In the interview, Applicant's representative discussed with the Examiner three (3) structural recitations that might be used to overcome the prior art rejections:

a) a recitation, as in amended claim 55, that the first tube clamping member is fixed to the positioning means and has a concave surface which curves toward the top portion of the positioning means;

b) a recitation, as in amended claim 87, that the top portion of the positioning means comprises first and second parts defining an opening disposed above the concave bearing surface and extending throughout the top portion whereby a tube can be inserted from above the top portion, between the first and second parts and onto the concave bearing surface; and

c) a recitation, as in new claim 91, of a bite member having a concave bearing surface that is conterminous with the concave bearing surface of the first tube

clamping member, but which is not covered by the second tube clamping member in the closed clamping position..

Applicant's representative argued that the only fixed clamping portion of the Rogers reference is convex and curves away from the positioning plate and that the clamping portions of the Nestor reference are pivotal and not fixed. He also argued that neither of the references shows an opening such as in (b) above or a bite member such as in (c) above.

The Examiner agreed that each of the above recitations would likely overcome the prior art rejections. He also agreed that Applicant could likely overcome the 35 USC 101 rejections by changing the term "with" to - -when- - as in amended claim 88.

Applicant's representative also discussed with the Examiner whether he would enter an amendment of the claims to incorporate the above recitations after final or whether another RCE would have to be filed. Applicant's representative argued that the outstanding rejection should not properly have been made final and asked that the Examiner enter any amendment now filed without the need for an RCE. The Examiner suggested that Applicant submit an Amendment After Final with the requested amendments and submit a request for withdrawal of the finality of the action in writing. He would then make a determination as to whether he would enter the Amendment After Final.

Applicant has now amended the claims in the manner discussed in the

interview. In particular, claim 55 has been amended as in subparagraph (a) above to recite that the first tube clamping member is fixed to the positioning means and has a concave surface which curves toward the top portion of the positioning means. Claim 87 has been amended as in subparagraph (b) above to recite that the positioning means define an opening through which a tube can be inserted through the top portion of the positioning plate. Claim 91 recites a bite member, which has a concave bearing surface that is not covered by the second tube clamping member.

None of these features of the claimed invention is shown or suggested in either of the cited references, Rogers or Nestor. As noted in the interview, the only fixed clamping portion of the Rogers reference is convex and curves away from the positioning plate in any orientation of the positioning plate, whereas the clamping portions of the Nestor reference are pivotal and not fixed. Moreover, neither reference shows or suggests either the claimed opening in the positioning plate through which a tube can be inserted through the top portion of the positioning plate, or the claimed bite member. For these reasons, the claims as amended are believed to be patentable over the cited art. Accordingly, it is respectfully submitted that the prior art rejections set forth in pages 3-6 of the Official Action should be withdrawn.

With respect to the rejections under 35 USC 112, second paragraph, appearing at page 2 of the Official Action, claims 60, 67 and 73 have been amended to remove the bases for these rejections. Similarly, claims 55 and 88 have been amended to remove the bases for the rejections under 35 USC 101. Specifically, the claims as

amended make clear that the patient is not part of the claimed assembly.

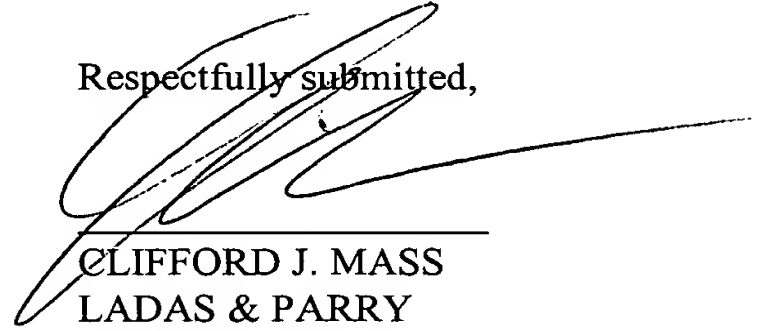
With respect to the finality of the rejection, Applicant respectfully notes that new claims were added with the RCE filed August 7, 2003, which were not rejected in view of the prior art applied against the claims previously of record (see, e.g., claims 88-90). These claims cannot be considered to be directed to the same invention claimed earlier (or they would have been rejected for the same reasons). Since these claims of the RCE were not drawn to the same invention as presented earlier, they may not be finally rejected in a first action (see MPEP Section 706.07(b)). For this reason, Applicant respectfully requests withdrawal of the finality of the last action and entry of the present amendment.

With respect to newly added claims 92-100, Applicant respectfully notes that new claim 92 combines recitations from claims 55 and 64, and that the latter claim contains recitations pertaining to the cap that have not been rejected over the cited art. Accordingly, it is believed that the new claims are also patentable over the art. New claims 93 and 94 contain recitations that correspond to recitations in claims 65 and 66. Claim 95 includes recitations from claim 57. Claims 96-100 contain recitations that correspond to recitations in claims 59-63.

In view of the above, it is respectfully submitted that all objections and rejections of record have been successfully traversed and that the application is now in allowable form. An early notice of allowance is earnestly solicited and is believed to

be fully warranted. Nevertheless, if the Examiner believes that a further amendment of the application is needed to place the application into allowable form, he is respectfully invited to telephone the undersigned to discuss.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Clifford J. Mass', is written over a horizontal line.

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